

Department of Energy

§ 429.126

(d) The manufacturer may modify a basic model determined to be non-compliant with an applicable energy conservation standard in such manner as to make it comply with the applicable standard. Such modified basic model shall then be treated as a new basic model and must be certified in accordance with the provisions of this part; except that in addition to satisfying all requirements of this part, any models within the basic model must be assigned new model numbers and the manufacturer shall also maintain, and provide upon request to DOE, records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce.

§ 429.116 Additional certification testing requirements.

Pursuant to § 429.102(b)(2), if DOE determines that independent, third-party testing is necessary to ensure a manufacturer's compliance with the rules of this part, part 430, or part 431, a manufacturer must base its certification of a basic model under subpart B of this part on independent, third-party laboratory testing.

§ 429.118 Injunctions.

If DOE has reason to seek an injunction under the Act:

(a) DOE will notify the manufacturer, private labeler or any other person as required, of the prohibited act at issue and DOE's intent to seek a judicial order enjoining the prohibited act unless the manufacturer, private labeler or other person, delivers to DOE within 15 calendar days a corrective action and compliance plan, satisfactory to DOE, of the steps it will take to ensure that the prohibited act ceases. DOE will monitor the implementation of such plan.

(b) If the manufacturer, private labeler or any other person as required, fails to cease engaging in the prohibited act or fails to provide a satisfactory corrective action and compliance plan, DOE may seek an injunction.

§ 429.120 Maximum civil penalty.

Any person who knowingly violates any provision of § 429.102(a) of this part may be subject to assessment of a civil

penalty of no more than \$200 for each violation. As to § 429.102(a)(1) with respect to failure to certify, and as to § 429.102(a)(2), (5) through (9), each unit of a covered product or covered equipment distributed in violation of such paragraph shall constitute a separate violation. For violations of § 429.102(a)(1), (3), and (4), each day of noncompliance shall constitute a separate violation for each basic model at issue.

§ 429.122 Notice of proposed civil penalty.

(a) The General Counsel (or delegee) shall provide notice of any proposed civil penalty.

(b) The notice of proposed penalty shall:

(1) Include the amount of the proposed penalty;

(2) Include a statement of the material facts constituting the alleged violation; and

(3) Inform the person of the opportunity to elect in writing within 30 calendar days of receipt of the notice to have the procedures of § 429.128 (in lieu of those of § 429.126) apply with respect to the penalty.

§ 429.124 Election of procedures.

(a) In responding to a notice of proposed civil penalty, the respondent may request:

(1) An administrative hearing before an Administrative Law Judge (ALJ) under § 429.126 of this part; or

(2) Elect to have the procedures of § 429.128 apply.

(b) Any election to have the procedures of § 429.128 apply may not be revoked except with the consent of the General Counsel (or delegee).

(c) If the respondent fails to respond to a notice issued under § 429.120 or otherwise fails to indicate its election of procedures, DOE shall refer the civil penalty action to an ALJ for a hearing under § 429.126.

§ 429.126 Administrative law judge hearing and appeal.

(a) When elected pursuant to § 429.124, DOE shall refer a civil penalty action brought under § 429.122 of this part to

§ 429.128

an ALJ, who shall afford the respondent an opportunity for an agency hearing on the record.

(b) After consideration of all matters of record in the proceeding, the ALJ will issue a recommended decision, if appropriate, recommending a civil penalty. The decision will include a statement of the findings and conclusions, and the reasons therefore, on all material issues of fact, law, and discretion.

(c)(1) The General Counsel (or delegatee) shall adopt, modify, or set aside the conclusions of law or discretion contained in the ALJ's recommended decision and shall set forth a final order assessing a civil penalty. The General Counsel (or delegatee) shall include in the final order the ALJ's findings of fact and the reasons for the final agency actions.

(2) Any person against whom a penalty is assessed under this section may, within 60 calendar days after the date of the final order assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the final order, or the court may remand the proceeding to the Department for such further action as the court may direct.

§ 429.128 Immediate issuance of order assessing civil penalty.

(a) If the respondent elects to forgo an agency hearing pursuant to § 429.124, the General Counsel (or delegatee) shall issue an order assessing the civil penalty proposed in the notice of proposed penalty under § 429.122, 30 calendar days after the respondent's receipt of the notice of proposed penalty.

(b) If within 60 calendar days of receiving the assessment order in paragraph (a) of this section the respondent does not pay the civil penalty amount, DOE shall institute an action in the appropriate United States District Court for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved and shall have jurisdiction to enter a judgment

10 CFR Ch. II (1–1–14 Edition)

enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

§ 429.130 Collection of civil penalties.

If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under § 429.126 or after the appropriate District Court has entered final judgment in favor of the Department under § 429.128, the General Counsel (or delegatee) shall institute an action to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

§ 429.132 Compromise and settlement.

(a) DOE may compromise, modify, or remit, with or without conditions, any civil penalty (with leave of court if necessary).

(b) In exercising its authority under paragraph (a) of this section, DOE may consider the nature and seriousness of the violation, the efforts of the respondent to remedy the violation in a timely manner, and other factors as justice may require.

(c) DOE's authority to compromise, modify or remit a civil penalty may be exercised at any time prior to a final decision by the United States Court of Appeals if § 429.126 procedures are utilized, or prior to a final decision by the United States District Court, if § 429.128 procedures are utilized.

(d) Notwithstanding paragraph (a) of this section, DOE or the respondent may propose to settle the case. If a settlement is agreed to by the parties, the respondent is notified and the case is closed in accordance with the terms of the settlement.

APPENDIX A TO SUBPART C OF PART 429—SAMPLING PLAN FOR ENFORCEMENT TESTING OF COVERED CONSUMER PRODUCTS AND CERTAIN HIGH-VOLUME COMMERCIAL EQUIPMENT

(a) The first sample size (n_1) for enforcement testing must be four or more units, except as provided by § 429.57(e)(1)(i).

(b) Compute the mean of the measured energy performance (\bar{x}_1) for all tests as follows: